

MARCUS D. SCHNEIDER

IBLA 85-643

Decided November 12, 1986

Appeal from a decision of the California State Office, Bureau of Land Management, declaring placer mining claim abandoned and void. CA MC 2484.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim--Mining Claims: Abandonment

An unpatented mining claim located after Oct. 21, 1976, is properly declared abandoned and void where the claimant failed to file either an affidavit of annual assessment work, a notice of intention to hold the claim, or a detailed report under 30 U.S.C. § 28-1 (1982) prior to December 31, regardless of whether the claimant was entitled to or granted deferment of annual assessment work.

APPEARANCES: Marcus D. Schneider, pro se.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Marcus D. Schneider has appealed from a decision of the California State Office, Bureau of Land Management (BLM), dated May 8, 1985, declaring the China Hill placer mining claim, CA MC 2484, abandoned and void for failure to file either an affidavit of assessment work or a notice of intention to hold the mining claim for the 1984 assessment year, pursuant to section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1982).

Appellant's mining claim was located March 11, 1977, and filed for recordation with BLM on May 6, 1977, pursuant to 43 U.S.C. § 1744(b) (1982). The claim is situated in the W 1/2 NE 1/4 NW 1/4 sec. 14, T. 35 N., R. 1 W., Mount Diablo Meridian, Shasta County, California. Appellant filed timely proofs of labor for 1978 and 1979, and notices of intention to hold the

mining claim in 1980 and 1981. 1/ Appellant again filed timely proofs of labor for the 1982 and 1983 assessment years. However, the record contains no affidavit of assessment work or a notice of intention to hold the mining claim filed for the 1984 assessment year.

The owner of an unpatented mining claim located after October 21, 1976, is required by 43 U.S.C. § 1744(a) (1982) to file either an affidavit of assessment work or a notice of intention to hold the claim "prior to December 31 of each year following the calendar year in which the said claim was located." The deadline for filing for the 1984 assessment year was December 30, 1984. 43 CFR 3833.2-1(b)(1).

In his statement of reasons for appeal, appellant contends he was "unable to do the 1984 assessment work" because of the continuing dispute with Elmore. 2/ Appellant states: "In 1983 when I had heavy equipment in doing the assessment work, Mrs. Elmore ran in front of the bulldozer, carrying her baby and ordered the operator to stop & get off the land." Appellant requests further deferment of assessment work "until BLM settles this trespass dispute with the Elmore's."

The language of 43 U.S.C. § 1744(a) (1982) specifically requires a mining claimant to file with the local recording office and BLM

either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, o[r] a detailed report provided by section 28-1 of Title 30, relating thereto.

Accordingly, in order to comply with 43 U.S.C. § 1744(a) (1982), one of the three documents set forth in the statute must be filed by the statutory deadline. See David and Roirdon Doremus, 61 IBLA 367 (1982). The form and contents of the three documents are defined by Departmental regulation. See 43 CFR §§ 3833.0-5, 3833.2-2(a) and (b), and 3833.2-3.

In the present case, appellant contends he was "unable" to perform the assessment work, and, therefore, he could not submit an affidavit of

1/ Appellant was granted a deferment of assessment work for 1980 and 1981 because he had been denied access to the claim, thereby preventing the performance of assessment work. In his request for deferment of assessment work, appellant asserted that the claim was being occupied by Melvin Elmore, who considered appellant's presence on the land to be a trespass. Appellant had submitted a letter, dated July 9 1980, from Elmore in which he states the United States does not own the land because it "never legally acquired title to the Pit River Indian Tribes' ancestral lands." There is nothing in the record to indicate the land is not owned by the United States.

2/ Appellant's statement of reasons was contained in his May 24, 1985, notice of appeal of the May 1985 BLM decision.

assessment work. In these circumstances, appellant should have submitted a notice of intention to hold the mining claim. See Robert E. Fennel, 56 IBLA 43, 47 (1981). Indeed, 43 U.S.C. § 1744(a) (1982) expressly recognizes that a notice of intention to hold a mining claim may be filed in such circumstances. See 43 CFR 3833.2-3(a). Thus, 43 CFR 3833.2-3, which governs the form and contents of such notices, provides, in subsection (b), that a notice "shall be in the form of either:"

(1) An exact legible reproduction or duplicate, except microfilm, of an instrument, signed by the owner of the claim or his/her agent, which was or will be filed for record pursuant to [43 U.S.C. § 1744(a)(1) (1982)] in the local jurisdiction of the State where the claim is located and recorded setting forth the following information:

(i) The Bureau of Land Management serial number assigned to each claim upon filing in the proper BLM office of a copy of the notice or certificate of location. Citing the serial number shall comply with the requirement in the Act to file an additional description of the claim;

(ii) Any change in the mailing address, if known, of the owner or owners of the claim[.]

(2) A reference to the decision on file in the proper BLM office by date and serial number which granted a deferment of the annual assessment work.

(3) A reference to a pending petition for deferment of the annual assessment work required by 30 U.S.C. 28 by date of filing and serial number and with the proper BLM office.

The statutory mining claim recordation requirement set forth in 43 U.S.C. § 1744(a) (1982) must be distinguished from the requirement that a claimant perform annual assessment work which is set forth in 30 U.S.C. § 28 (1982), which may be waived in circumstances where there are "legal impediments" which affect the right of a claimant to enter upon the surface of the claim or to gain access to the boundaries of the claim. See 43 CFR 3852.1; Lyra-Vega II Mining Association, 91 IBLA 378 (1986). There is no comparable statutory provision which permits the deferral, suspension, or waiver of compliance with the mining claim recordation requirements set forth in 43 U.S.C. § 1744(a) (1982). Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981). On the other hand, by submitting a properly completed notice of intention to hold a mining claim with both the local recording office and BLM prior to the statutory deadline, a claimant satisfies the requirements of 43 U.S.C. § 1744(a) (1982), even though he may have been unable to comply with the annual labor requirements of 43 U.S.C. § 28(b) (1982). Cf. Ronald Willden, 60 IBLA 173, 176, (1981). In the present case, it is evident that appellant failed to make the necessary mining claim recordation filing prior to the deadline, i.e., on or before December 30, 1984. On appeal appellant now seeks to submit a petition for deferment. Even if this document were deemed

sufficient to meet the requirements of 30 U.S.C. § 28 (1982), it is plainly late and does not meet the requirements of 43 U.S.C. § 1744(a) (1982).

The result of a failure to file the document required by 43 U.S.C. § 1744(a) (1982) is set forth in 43 U.S.C. § 1744(c) (1982), which states that the failure "shall be deemed conclusively to constitute an abandonment of the mining claim * * * by the owner." In such circumstances, the claim is thereby rendered "void." 43 CFR 3833.4(a). Therefore, in the absence of evidence that there was a timely submission by appellant of one of the three documents required by 43 U.S.C. § 1744(a) (1982), on or before December 30, 1984, we conclude BLM properly declared appellant's mining claim abandoned and void. See Ptarmigan Co., Inc., 91 IBLA 113 (1986); Robert E. Fennell, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

R. W. Mullen
Administrative Judge

We concur:

Will A. Irwin
Administrative Judge

John H. Kelly
Administrative Judge

